

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Friday, on the 18th day of July, 2025.

I.A. No.5 of 2025 in I.A.No.4 of 2025 in

O.S. No.241 of 2019

CNR No.TNKK04-000378-2019

Abubucker ... Petitioner / Respondent /
Defendant

-vs-

Viswanath Vishal ... Respondent / Petitioner /Plaintiff

This petition came before this court on 17.07.2025 for a final hearing in the presence of Mr. R. Appapvu Rathinam, Learned Counsel for the Petitioner and in the presence of Mr. M. Padmasanan, Learned Counsel for the Respondent and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The Petitioner had filed under Order IX Rule 7 and Section 151 of the Code of Civil Procedure, seeking to set aside the exparte order passed against the petitioner herein defendant on 11.06.2025 in the above suit.

2. Gist of Averments in the Petitioner's Petition :

The Petitioner is the defendant in the above suit. The suit was posited for hearing on 11.06.2025. On that date the petitioner was unable to appear and file counter before this court due to bonafide and unavoidable reasons. As a result, the defendant was set exparte. The petitioner respectfully states that the non filing of counter for I.A.No.4 of 2025 on the date of hearing was neither wilful nor wanton but due to the reasons stated above, which were beyond the control of the petitioner. The petitioner has a strong and meritorious defence to put forth in the suit and serious prejudice would be caused if the exparte is not set aside. Hence, the petition is to be allowed.

3) Gist of the Averments in the Respondent's Counter:

The Respondent had filed a counter stating that the petitioner filed by the Petitioner / defendant are not maintainable under law and facts. That the application filed by the Petitioner / Defendant for setting aside the exparte order dated 11.06.2025 in I.A.No. 4 of 2025 lacks legal and factual merit. That the Plaintiff filed the present suit and I.A.No.4 of 2025. The present petitioner failed to appear before this court and did not file any objection within the time granted in the I.A.No.4 of 2025. The court had provided sufficient opportunity to the Petitioner to present his objection, but the Petitioner failed to avail the same. That the court, after considering all material facts presented by the

Plaintiff, rightly passed a exparte order on 11.06.2025 and posted for order on 12.06.2025. That the current petition is nothing but an abuse of process of law, filed at the last moment on 23.06.2025 after the several hearing merely drag the case and harass the Plaintiff. That the petitioner was given adequate and reasonable opportunity to file the objections. The failure to participate was deliberate and willful, and cannot now be masked as an inadvertent or bonafide omission. There is no valid ground to allow the petition, as it is frivolous. This petition is not maintainable in law and has no scope for further proceedings. The petition lacks merit and should not be granted. Hence to accept the counter and dismissed the petition.

4. The point for consideration is whether the above petition has to be allowed or not?

5. Point:

Heard both sides. Records perused. The Petitioner herein and respondent in the above petition in I.A.No. 4 of 2025 filing this petition. The petitioner respectfully states that the non filing of counter for I.A.No.4 of 2025 on the date of hearing was neither wilful nor wanton but due bonafide and unavoidable reasons, which were beyond the control of the petitioner. Considering the above reason and to give to fair opportunity, this court is inclined to allow this petition.

As a result, this petition is allowed, No cost.

Dictated to the steno-typist, typed by her in the Computer directly,
printed, corrected and pronounced by me in open court this the 18th day of July,
2025.

II Additional District Munsif
Nagercoil.

List of witness and documents for Petitioner side : Nil

List of witness and documents for Respondent side : Nil

II Additional District Munsif
Nagercoil.

*II ADM, Nagercoil.
Draft/Fair Order
I.A.No.5/2025 in
I.A.No.4/2025 in
O.S.No.241 of 2019
Date: 18.07.2025.*